

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL KOGAN and CHRISTOPHER
HEWITT,

Plaintiffs,

v.

ALLSTATE FIRE AND CASUALTY
INSURANCE CO.,

Defendant.

CASE NO. C15-5559 BHS

ORDER DENYING PLAINTIFFS'
MOTION TO REMAND

This matter comes before the Court on Plaintiffs Daniel Kogan and Christopher Hewitt's (collectively "Plaintiffs") motion to remand (Dkt. 15). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL AND FACTUAL BACKGROUND

On January 6, 2015, Christopher Hewitt ("Hewitt") was involved in a car accident. Dkt. 1-2 ("Comp.") ¶ 1.9. Hewitt's car sustained heavy damage, and the repairs cost more than \$35,000. *Id.* Hewitt's car was worth less after it was repaired than before the

1 accident. *Id.* On January 23, 2015, Daniel Kogan’s (“Kogan”) car was damaged in a hit-
 2 and-run. *Id.* ¶ 1.8. Kogan’s car was worth less after it was repaired than before the
 3 accident. *Id.*

4 Both Plaintiffs had automobile insurance policies with Defendant Allstate Fire and
 5 Casualty Insurance Co. (“Allstate”). *Id.* ¶ 1.2. Plaintiffs sought underinsured motorist
 6 coverage under their Allstate policies. *Id.* ¶¶ 1.10, 4.3. Allstate did not compensate
 7 Plaintiffs for the diminished value of their cars. *Id.* ¶¶ 1.10–1.11, 4.3.

8 On August 4, 2015, Plaintiffs filed an amended class action complaint against
 9 Allstate in Pierce County Superior Court. *See Comp.* Plaintiffs claim that Allstate has
 10 continuously failed to adjust losses to include diminished value. *Id.* ¶¶ 1.6–1.7. Plaintiffs
 11 seek to certify the following class:

12 All ALLSTATE insureds with Washington policies issued in
 13 Washington State, where the insured’s vehicle damages were covered under
 Underinsured Motorist coverage, and

- 14 1. the repair estimates on the vehicle (including any
 supplements) totaled at least \$1,000; and
- 15 2. the vehicle was no more than six years old (model year plus
 five years) and had less than 90,000 miles on it at the time of
 the accident; and
- 16 3. the vehicle suffered structural (frame) damage and/or
 deformed sheet metal and/or required body or paint work.

17 Excluded from the Class are (a) claims involving leased vehicles or
 18 total losses, and (b) the assigned Judge, the Judge’s staff and family.

19 *Id.* ¶ 5.3. Plaintiffs allege that the number of class members will be about 2,518 and the
 20 average damages will be about \$1,460 per class member. *Id.* ¶ 2.4. Based on these
 21 numbers, Plaintiffs allege that the amount in controversy is \$3,676,280. *Id.* Plaintiffs
 22

1 assert a single breach of contract claim. *Id.* ¶¶ 6.1–6.5. Plaintiffs seek compensatory
 2 damages and statutory attorney’s fees under RCW 4.84.015. *Id.* ¶ 7.1.

3 On August 7, 2015, Allstate removed the action to this Court under the Class
 4 Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Dkt. 1. Allstate’s notice of
 5 removal asserts that CAFA requirements are satisfied. *See id.* With respect to the
 6 amount in controversy, Allstate alleges that there is at least \$5,407,840 in controversy.
 7 *Id.* at 8.

8 On September 8, 2015, Plaintiffs moved to remand. Dkt. 15. On September 28,
 9 2015, Allstate responded. Dkt. 16. On October 2, 2015, Plaintiffs replied. Dkt. 17. On
 10 October 5, 2015, Allstate filed a surreply and request to strike a declaration submitted
 11 with Plaintiffs’ reply.¹ Dkt. 19. On October 28, 2015, Allstate filed a notice of
 12 supplemental authority. Dkt. 20. On November 3, 2015, Plaintiffs responded. Dkt. 21.

13 II. DISCUSSION

14 Plaintiffs move to remand, arguing that Allstate has not shown that the amount in
 15 controversy exceeds CAFA’s jurisdictional requirement of \$5,000,000.² Dkt. 15.

16 A. CAFA Removal Standard

17 “A defendant generally may remove a civil action if a federal district court would
 18 have original jurisdiction over the action.” *Allen v. Boeing Co.*, 784 F.3d 625, 628 (9th
 19 Cir. 2015). CAFA vests federal district courts with original jurisdiction over class

21 ¹ The declaration submitted with Plaintiffs’ reply does not alter the Court’s conclusion.

22 ² It is undisputed that this case satisfies CAFA’s numerosity and minimal diversity requirements.

actions involving more than 100 class members, minimal diversity, and at least \$5,000,000 in controversy, exclusive of interests and costs. *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 552 (2014) (citing 28 U.S.C. § 1332(d)). A defendant seeking removal under CAFA must file a notice of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a); *see also Dart Cherokee*, 135 S. Ct. at 551. The burden of establishing removal jurisdiction remains on the party seeking removal. *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006). There is no presumption against removal under CAFA. *Dart Cherokee*, 135 S. Ct. at 554.

B. Amount in Controversy

To satisfy CAFA’s amount in controversy requirement, the removing defendant must plausibly allege in the notice of removal that the amount in controversy exceeds \$5,000,000. *Id.* If the plaintiff challenges the defendant’s allegation, the defendant must then establish by a preponderance of the evidence that CAFA’s amount in controversy requirement has been satisfied. *Id.*

The preponderance of the evidence standard is not daunting, and only requires that the defendant “provide evidence establishing that it is ‘*more likely than not*’ that the amount in controversy exceeds [\$5,000,000].” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204 (E.D. Cal. 2008) (quoting *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996)). Nevertheless, “CAFA’s requirements are to be tested by consideration of real evidence and the reality of what is at stake in the litigation, using reasonable assumptions underlying the defendant’s theory of damages exposure.” *Ibarra*

1 *v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015). Both parties may submit
2 evidence outside the complaint, including affidavits, declarations, or other summary-
3 judgment-type evidence. *Id.* at 1197. “Under this system, a defendant cannot establish
4 removal jurisdiction by mere speculation and conjecture, with unreasonable
5 assumptions.” *Id.*

6 In its notice of removal, Allstate plausibly alleged that there is more than
7 \$5,000,000 in controversy based on compensatory damages alone. Dkt. 1 at 8. To
8 support this allegation, Allstate submitted the declaration of Michael Kane (“Mr. Kane”),
9 a Claims-Support & Process Design-Lead Consultant for Allstate. Dkt. 1, Ex. A,
10 Declaration of Michael Kane (“Kane Dec.”) ¶ 2. Mr. Kane supervised an audit of
11 Allstate’s claims database that tracked the criteria set forth in Plaintiffs’ proposed class
12 definition. *Id.* ¶ 4; *see also* Comp. ¶ 5.3. Based on Mr. Kane’s audit and some
13 conservative extrapolations, Allstate determined that the proposed class will include at
14 least 3,704 members. Dkt. 1 at 7. Using Plaintiffs’ allegation that the average damages
15 will be \$1,460 per class member, Allstate demonstrated that compensatory damages total
16 at least \$5,407,840. *Id.* at 8.

17 In their motion to remand, Plaintiffs challenge Allstate’s number of class members
18 on several grounds. *See* Dkt. 15. In response, Allstate presents additional evidence
19 showing that compensatory damages still exceed \$5,000,000, even if adjustments are
20 made to the number of class members based on Plaintiffs’ arguments. *See* Dkt. 16, Ex A,
21 Supplemental Declaration of Michael Kane. To the extent Plaintiffs quibble further with
22 Allstate’s calculations in their reply, *see* Dkt. 17, the Court notes that Allstate is not

1 required to prove the exact amount of Plaintiffs' alleged damages. *See Ibarra*, 775 F.3d
2 at 1198 n.1; *Korn*, 536 F. Supp. 2d at 1204. Rather, Allstate must establish that it is more
3 likely than not that the amount in controversy exceeds \$5,000,000. *See Dart Cherokee*,
4 135 S. Ct. at 554; *Sanchez*, 102 F.3d at 404.

5 Having considered the allegations in Plaintiffs' complaint, the parties' briefing,
6 and the evidentiary submissions, the Court concludes that Allstate has satisfied its
7 burden. Allstate has demonstrated by a preponderance of the evidence that compensatory
8 damages in this case exceed CAFA's jurisdictional requirement.³ The Court denies
9 Plaintiffs' motion to remand.

10 III. ORDER

11 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to remand (Dkt. 15) is
12 **DENIED**.

13 Dated this 9th day of November, 2015.

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16 BENJAMIN H. SETTLE
United States District Judge

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21 ³ Because Allstate has demonstrated by a preponderance of the evidence that
22 compensatory damages exceed \$5,000,000, the Court declines to address the parties' arguments
with respect to attorney fees under *Olympic Steamship*.